THE MANITOBA HUMAN RIGHTS COMMISSION
LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

connections

Equality of Opportunity and Freedom from Discrimination

Wanted: Human Rights Awards Nominees

The MHRC and its partners, the Canadian Human Rights Commission and the Manitoba Association for Rights and Liberties are seeking nominations for the annual Human Rights Commitment Award and Sybil Shack Human Rights Award.

The Commitment Award of Manitoba honours Manitobans (individuals or groups) who contribute to the advancement of human dignity and the elimination of discrimination in the province. This year, to honour the release of the Truth and Reconciliation Report and the Calls to Action we invite nomination of individuals who have worked toward the reconciliation between Indigenous peoples and others in the province.

The Sybil Shack Youth Award recognizes exceptional young people (individuals and groups under the age of 25) who work tirelessly towards the promotion and protection of human rights.

2014 Commitment Award recipient Althea Guiboche receives her Award from Jerry Woods (former Chairperson, MHRC Board of Commissioners.

To nominate someone, send an email to hrc@gov.mb.ca explaining why they should be recognized for their contribution to human rights. Complete nomination details can be found on the MHRC web site. All nominations are due November 12, 2015.

The recipients of these awards will be celebrated on December 9, 2015, on the eve of International Human Rights Day.

The Rights Connection Adjudication Decision Highlights MHRC's Role

By Tanya Buschau – Manager of Intake & Mediation

There is a perception that the Commission represents or advocates for the Complainant. This is, however, not true. In the initial stages of investigating a complaint, the Commission is "neutral" and investigates complaints to see if there is sufficient evidence of discrimination, which would warrant a public adjudication hearing. When there is not enough evidence of discrimination the complaint is dismissed without a hearing. (The Commission does also provide an opportunity for parties to voluntarily resolve complaints through mediation).

If a complaint has not been dismissed, nor resolved through mediation, the Commission will request that the province appoint an adjudicator to hear the complaint. At the adjudication stage, there are three parties to the complaint: the Complainant, the Respondent and the Commission.

Contrary to popular belief, the Commission does not provide the Complainant with legal counsel. Rather, the Commission's role is to present its argument and try to prove the complaint because it is in the public's interest to do so. In most cases, the Complainant and the Commission have a common interest: proving and addressing the discrimination set out in the complaint. The Complainant therefore usually allows the Commission to lead the evidence and make an argument in support of the complaint and does not retain their own legal counsel and/or make their own separate argument. A recent adjudication decision however, provided an example of when the Commission determined that the public's interest differed from the Complainant's.

The Complainant filed a complaint against her former employer alleging that she was discriminated against on the basis of her disability when her employer did not accommodate her need to be away from work due to mental health issues, and instead terminated her employment. An investigation found that there was sufficient evidence of discrimination that the complaint should not be dismissed, but rather should proceed to a public adjudication. Although the parties were first provided an opportunity to reach a mutually agreeable resolution through mediation, they were unable to do so. The Respondent made an offer of settlement which the Complainant rejected. The Respondent then requested that an adjudicator assess whether

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Landmark Decision Emphasizes Employers Must Avoid Stereotypes

A government appointed adjudicator found that a woman was discriminated against by her employer, because it could not demonstrate it had reasonably accommodated her disability-related needs, relating to addiction to alcohol.

The Complainant admitted to struggling with alcohol and was willing to seek treatment, but the employer refused to let her return to work unless she agreed to abstain entirely from alcohol. Her employment was terminated, when the employer recieved reports that she had been drinking outside of work.

The Commission was clear that an employer must always consider safety, but that the employer had not acted reasonably because it did not consider the input of the woman's addictions counsellor or other treating professionals when setting her return to work conditions.

The Adjudicator ordered the employer to develop and implement a reasonable accommodation policy and, for the first time in Manitoba, ordered that the woman be reinstated to her position with backpay, along with $10,000 for injury to dignity. Full details can be found on our web site.

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or not that offer was reasonable under section 37.1 of *The Code*. The Respondent's offer consisted of one year of lost wages, $8,000 in compensation for injury to dignity, feelings and self-respect, and an apology. They also agreed to review their policies and practices with their legal counsel and the Commission.

Although the Complainant took the position that the offer was not reasonable, the Commission took the position, along with the Respondent, that if the complaint was proven to be true, the offer provided a reasonable remedy of the discrimination in the complaint. Ultimately, Adjudicator Peter Sim agreed that the offer was reasonable, meaning that it approximated what an adjudicator would award if the complaint proceeded to a full hearing and was proven to be true. The adjudicator allowed the Complainant 35 days to accept the offer, after which he would terminate the proceedings.

This case is notable because it highlights the purpose of *The Code* as well as the Commission's role. The purpose being to compensate a Complainant for any harm or loss they suffered as a result of discrimination, or in other words to "make them whole", as well as to prevent future discrimination. As such, when a Respondent has made an offer that does fulfill this dual purpose, the Commission will take the position that the public's interest has been served and the proceedings should be terminated (after the Complainant has been provided a final opportunity to accept the offer).

The full decision can be viewed on our web site.

Learn more about human rights in the workplace. Register on-line today for employment seminars. www.manitobahumanrights.ca

Do you know an individual or group who is working toward reconciliation between Indigenous peoples and others in the province?

Do you know a young person or group (under 25 years old) who is actively promoting or protecting human rights in Manitoba or around the world?

Nominate them today for the Commitment Award of Manitoba or the Sybil Shack Human Rights Youth Award. E-mail hrc@gov.mb.ca with details as to how the nominee is making this world a better place. The nomination deadline is November 12, 2015.